

## SENATE BILL NO. 170

INTRODUCED BY M. HALLIGAN

BY REQUEST OF THE LAW, JUSTICE, AND INDIAN AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO CHILD ABUSE AND NEGLECT PROCEEDINGS; ALLOWING SCHOOL DISTRICTS TO DISCLOSE CERTAIN INFORMATION TO THE COURT, THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, AND A CHILD'S LEGAL REPRESENTATIVES; REQUIRING APPOINTMENT OF COUNSEL FOR INDIGENT PARENTS WHEN THE STATE REQUESTS A DETERMINATION THAT PRESERVATION OR REUNIFICATION SERVICES NEED NOT BE PROVIDED; ALLOWING ~~MEDIATION~~ ALTERNATIVE DISPUTE RESOLUTION IN CHILD ABUSE AND NEGLECT CASES; REQUIRING A SHOW CAUSE HEARING TO BE HELD WITHIN 10 DAYS, EXCLUDING WEEKENDS AND HOLIDAYS, OF AN INITIAL PETITION; REQUIRING AN ADJUDICATION TO BE MADE WITHIN 90 DAYS OF A SHOW CAUSE HEARING; REQUIRING A DISPOSITIONAL HEARING TO BE HELD WITHIN 20 DAYS AFTER AN ADJUDICATORY ORDER; AMENDING SECTIONS 41-3-101, 41-3-205, 41-3-301, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-412, 41-3-420, AND 41-3-421, MCA; AND REPEALING ~~SECTION~~ SECTIONS 41-3-413 AND 41-3-1014, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 41-3-101, MCA, is amended to read:

**"41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

- (a) ensure that all youth are afforded an adequate physical and emotional environment to promote normal development;
- (b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;
- (c) achieve these purposes in a family environment whenever possible;
- (d) preserve the unity and welfare of the family whenever possible;
- (e) ensure that there is no forced removal of a child from the family based solely on an unsubstantiated allegation of abuse or neglect; ~~and~~
- (f) recognize that a child is entitled to assert the child's constitutional rights;

~~(2) It is the policy of this state to:~~

~~(a) protect, whenever possible, family unity;~~

(G) ENSURE THAT ALL CHILDREN HAVE A RIGHT TO A HEALTHY AND SAFE CHILDHOOD IN A NURTURING PERMANENT FAMILY OR IN THE CLOSEST POSSIBLE SUBSTITUTE;

~~(b)(g)(H)~~ provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection;

~~(c)(h)(I)~~ require a department social worker to interview the parents of a child to which a petition pertains, if they are reasonably available, before the state may file a petition for temporary investigative authority ~~and~~ or a petition for immediate protection and emergency protective services and to require that a judge may not issue an order granting ~~the~~ a petition, except an order for immediate protection of the youth, until the parents, if they are reasonably available, are given the opportunity to appear before the judge or have their statements, if any, presented to the judge for consideration before an order is granted; and

~~(d)(i)(J)~~ ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

~~(3)(2)~~ It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

~~(4)(3)~~ In implementing the policy of this section, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child and when the home is approved by the department, place the child with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, prior to placing the child in an alternative protective or residential facility. Prior to approving a home, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

(4) In implementing the policy of this section, the child's health and safety are of paramount concern."

**Section 2.** Section 41-3-205, MCA, is amended to read:

**"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and

its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections ~~(4)~~ (6) and ~~(5)~~ (7), a person who permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

1 (h) a person about whom a report has been made and that person's attorney, with respect to the  
2 relevant records pertaining to that person only and without disclosing the identity of the reporter or any  
3 other person whose safety may be endangered;

4 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision  
5 of an alleged perpetrator of child abuse or neglect;

6 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project  
7 and that is authorized by the department to conduct the research or evaluation;

8 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a  
9 family group conference for the purposes of assessing the needs of the child and family, formulating a  
10 treatment plan, and monitoring the plan;

11 (l) the coroner or medical examiner when determining the cause of death of a child;

12 (m) a child fatality review team recognized by the department;

13 (n) a department or agency investigating an applicant for a license or registration that is required  
14 to operate a youth care facility, day-care facility, or child-placing agency;

15 (o) a person or entity who is carrying out background, employment-related, or volunteer-related  
16 screening of current or prospective employees or volunteers who have or may have unsupervised contact  
17 with children through employment or volunteer activities. A request for information under this subsection  
18 (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that  
19 indicates a risk to children, persons with developmental disabilities, or older persons posed by the person  
20 about whom the information is sought, as determined by the department.

21 (p) the news media if disclosure is limited to confirmation of factual information regarding how  
22 the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent  
23 or guardian, as determined by the department;

24 (q) an employee of the department or other state agency if disclosure of the records is necessary  
25 for administration of programs designed to benefit the child;

26 (r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is  
27 necessary to meet requirements of the federal Indian Child Welfare Act;

28 (s) a youth probation officer who is working in an official capacity with the child who is the  
29 subject of a report in the records;

30 (t) a county attorney, peace officer, or attorney who is hired by or represents the department; if

1 disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or  
2 neglect;

3 (u) a foster care review committee established under 41-3-1115 or, when applicable, a local  
4 citizen review board established under Title 41, chapter 3, part 10;

5 (v) a school employee participating in an interview of a child by a social worker, county attorney,  
6 or peace officer, as provided in 41-3-202;

7 (w) a member of a county interdisciplinary child information team formed under the provisions of  
8 52-2-211;

9 (x) members of a local interagency staffing group provided for in 52-2-203;

10 (y) a member of a youth placement committee formed under the provisions of 41-5-121; or

11 (z) a principal of a school or other employee of the school district authorized by the trustees of  
12 the district to receive the information with respect to a student of the district who is a client of the  
13 department.

14 (4) A school or school district may disclose, without consent, personally identifiable information  
15 from the education records of a pupil to the department, the court, a review board, and the child's  
16 court-appointed attorney, guardian ad litem, or special advocate.

17 (5) Information that identifies a person as a participant in or recipient of substance abuse  
18 treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws,  
19 including the consent provisions of the law.

20 ~~(4)~~(6) A person who is authorized to receive records under this section shall maintain the  
21 confidentiality of the records and may not disclose information in the records to anyone other than the  
22 persons described in subsection (3)(a). However, this subsection may not be construed to compel a family  
23 member to keep the proceedings confidential.

24 ~~(5)~~(7) A news organization or its employee, including a freelance writer or reporter, is not liable  
25 for reporting facts or statements made by an immediate family member under subsection ~~(4)~~ (6) if the  
26 news organization, employee, writer, or reporter maintains the confidentiality of the child who is the  
27 subject of the proceeding.

28 ~~(6)~~(8) This section is not intended to affect the confidentiality of criminal court records or records  
29 of law enforcement agencies.

30 ~~(7)~~(9) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant

1 to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be  
2 provided without cost."

3

4 **Section 3.** Section 41-3-301, MCA, is amended to read:

5 **"41-3-301. Emergency protective service.** (1) Any child protective social worker of the department  
6 ~~of public health and human services~~, a peace officer, or the county attorney who has reason to believe  
7 any youth is in immediate or apparent danger of harm may immediately remove the youth and place the  
8 youth in a protective facility. The department may make a request for further assistance from the law  
9 enforcement agency or take appropriate legal action. The person or agency placing the child shall notify  
10 the parents, parent, guardian, or other person having legal custody of the youth at the time the placement  
11 is made or as soon after placement as possible. Notification under this subsection must include the reason  
12 for removal, information regarding the show cause hearing, and the purpose of the show cause hearing.

13 (2) A child who has been removed from the child's home or any other place for the child's  
14 protection or care may not be placed in a jail.

15 (3) ~~A~~ An abuse and neglect petition must be filed within ~~48 hours~~ 2 working days, excluding  
16 weekends and holidays, of emergency placement of a child unless arrangements acceptable to the agency  
17 for the care of the child have been made by the parents. A show cause hearing must be held within 10  
18 days, excluding weekends and holidays, of the filing of the initial petition unless otherwise stipulated by  
19 the parties pursuant to [section 14].

20 (4) The department ~~of public health and human services~~ shall make the necessary arrangements  
21 for the ~~youth's~~ child's well-being as are required prior to the court hearing."

22

23 **Section 4.** Section 41-3-401, MCA, is amended to read:

24 **"41-3-401. Abuse and neglect petitions -- burden of proof.** (1) (a) Proceedings under this chapter  
25 must be initiated by the filing of a petition. A petition may request the following relief:

26 (i) immediate protection and emergency protective services, as provided in 41-3-402;

27 (ii) temporary investigative authority, as provided in [section 7];

28 (iii) temporary legal custody, as provided in [section 11];

29 (iv) termination of the parent-child legal relationship, as provided in 41-3-607;

30 (v) appointment of a guardian pursuant to 41-3-421;

1 (vi) a determination that preservation or reunification services need not be provided; or  
2 (vii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vi) or any other relief  
3 that may be required for the best interests of the child.

4 (b) The petition may be modified for different relief at any time within the discretion of the court.

5 (c) A petition for temporary legal custody may be the initial petition filed in a case.

6 (d) A petition for the termination of the parent-child legal relationship may be the initial petition  
7 filed in a case if a request for a determination that preservation or reunification services need not be  
8 provided is made in the petition.

9 ~~(1)(2)~~ The county attorney, attorney general, or an attorney hired by the county ~~is responsible~~  
10 ~~for filing~~ shall file all petitions under this chapter, ~~except as provided in 41-3-303.~~ The A petition filed by  
11 the county attorney, attorney general, or an attorney hired by the county must be accompanied by an  
12 affidavit by the department alleging that the child appears to have been abused, neglected, or abandoned  
13 and stating the basis for the ~~allegation~~ petition.

14 ~~(2)(3)~~ Upon receipt of a petition, ~~except a petition for temporary investigative authority, the court~~  
15 ~~shall set a date for an adjudicatory hearing on the petition.~~ The Abuse and neglect petitions must be given  
16 highest preference by the court in setting hearing dates.

17 ~~(3)(4)~~ A An abuse and neglect petition ~~alleging abuse or neglect~~ is a civil action brought in the  
18 name of the state of Montana. The Montana Rules of Civil Procedure apply except as modified in this part.  
19 Proceedings under a petition are not a bar to criminal prosecution.

20 (5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has  
21 the burden of presenting evidence required to justify the relief requested and establishing:

22 (i) probable cause for the issuance of an order for immediate protection and emergency protective  
23 services or an order for temporary investigative authority;

24 (ii) preponderance of the evidence for an order of adjudication or temporary legal custody; or

25 (iii) clear and convincing evidence for an order terminating the parent-child legal relationship.

26 (b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child  
27 Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal  
28 Indian Child Welfare Act apply.

29 ~~(4)(6)~~ The Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or  
30 parent, guardian, or other person or agency having legal custody of the ~~youth~~ child named in the petition,

1 if residing in the state, must be served personally with a copy of ~~the petition and summons~~ all petitions  
2 at least 5 ~~working~~ WORKING days before the date set for hearing. If the person or agency cannot be served  
3 personally, the person or agency may be served by publication in the manner provided by the Montana  
4 Rules of Civil Procedure for other types of proceedings.

5 ~~(5)(7)~~ If personal service cannot be made upon the parents or parent, guardian, or other person  
6 or agency having legal custody, the court shall appoint an attorney to represent the unavailable party  
7 when, in the opinion of the court, the interests of justice require.

8 ~~(6)(8)~~ If a parent of the child is a minor, notice must be given to the minor parent's parents or  
9 guardian, and if there is no guardian, the court shall appoint one.

10 ~~(7)(9)~~ Any person interested in any cause under this chapter has the right to appear. Any foster  
11 parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing  
12 the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right  
13 to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive  
14 parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

15 ~~(8)(10)~~ Except when the proceeding is instituted or commenced at the request of the department,  
16 a citation must be issued and served upon a representative of the department before the court hearing.

17 ~~(9)(11)~~ The An abuse and neglect petition must:

18 (a) state the nature of the alleged abuse or neglect and of the relief requested;

19 (b) state the full name, age, and address of the youth child and the name and address of the  
20 youth's child's parents or guardian or person having legal custody of the youth child;

21 (c) state the names, addresses, and relationship to the youth child of all persons who are  
22 necessary parties to the action.

23 ~~(10)~~ The petition may ask for the following relief:

24 ~~—— (a) temporary investigative authority and protective services, as provided in 41-3-402;~~

25 ~~—— (b) temporary legal custody, as provided in 41-3-406;~~

26 ~~—— (c) appointment of a guardian pursuant to 41-3-421;~~

27 ~~—— (d) termination of the parent-child legal relationship and either:~~

28 ~~—— (i) permanent legal custody with the right to consent to adoption, as provided in 41-3-607; or~~

29 ~~—— (ii) appointment of a guardian; or~~

30 ~~—— (e) any combination of the provisions of subsections (10)(a) through (10)(d) or any other relief that~~



1 ~~may be required for the best interests of the child.~~

2 ~~—— (11) A request for a determination that reunification services need not be provided pursuant to~~  
3 ~~41-3-403 may be made in conjunction with the filing of a petition requesting relief, as provided for in~~  
4 ~~subsection (10) of this section.~~

5 ~~(12) The petition may be modified for different relief at any time within the discretion of the court.~~

6 ~~(13)(12) The court may at any time on its own motion or the motion of any party appoint counsel~~  
7 ~~for any indigent party. If an indigent parent is not already represented by counsel, counsel must be~~  
8 ~~appointed for an indigent parent at the time that a request is made for a determination that preservation~~  
9 ~~or reunification services need not be provided.~~

10 ~~(13) At any stage of the proceedings considered appropriate by the court, the court may order an~~  
11 ~~alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute~~  
12 ~~resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family~~  
13 ~~group conference, mediation, or a settlement conference. If a court orders an alternative dispute resolution~~  
14 ~~proceeding, a party who does not wish to participate may file a motion objecting to the order. IF THE~~  
15 ~~DEPARTMENT IS A PARTY TO THE ORIGINAL PROCEEDING, A REPRESENTATIVE OF THE DEPARTMENT WHO HAS COMPLETE~~  
16 ~~AUTHORITY TO SETTLE THE ISSUE OR ISSUES IN THE ORIGINAL PROCEEDING MUST BE PRESENT AT ANY ALTERNATIVE~~  
17 ~~DISPUTE RESOLUTION PROCEEDING.~~

18 ~~(14) Service of a petition under this section must be accompanied by a written notice advising the~~  
19 ~~child's parent, guardian, or other person having physical or legal custody of the child of the:~~

20 ~~(a) right to request the appointment of counsel if the person is indigent or if appointment of~~  
21 ~~counsel is required under the federal Indian Child Welfare Act, if applicable;~~

22 ~~(b) right to contest the allegations in the petition; and~~

23 ~~(c) timelines for hearings and determinations required under this chapter.~~

24 ~~(15) Orders issued under this chapter must contain a notice provision advising a child's parent,~~  
25 ~~guardian, or other person having physical or legal custody of the child that:~~

26 ~~(a) the state COURT is required by federal and state laws to hold a permanency hearing to~~  
27 ~~determine the permanent placement of a child no later than 12 months after a judge determines that the~~  
28 ~~child has been abused or neglected or 12 months after the first 60 days that the child has been removed~~  
29 ~~from the child's home;~~

30 ~~(b) if a child is in foster care for 15 of the last 22 months, state law presumes that termination~~

1 of parental rights is in the best interests of the child and the state is required to file a petition to terminate  
2 parental rights; and

3 (c) completion of a treatment plan does not guarantee the return of a child.

4 (16) A court may appoint a standing master to conduct hearings and propose decisions and orders  
5 to the court for court consideration and action. A standing master may not conduct a proceeding to  
6 terminate parental rights. A standing master must be a member of the state bar of Montana and must be  
7 knowledgeable in the area of child abuse and neglect laws."

8  
9 **Section 5.** Section 41-3-402, MCA, is amended to read:

10 **"41-3-402. Petition for ~~temporary investigative authority~~ immediate protection and emergency**  
11 **protective services -- order -- service.** (1) (a) In a case in which it appears that a ~~youth~~ child is abused or  
12 neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an  
13 attorney hired by the county may file a petition for ~~temporary investigative authority~~ immediate protection  
14 and emergency protective services. In implementing the policy of this section, the child's health and  
15 safety are of paramount concern.

16 ~~(2)(b)~~ A petition for ~~temporary investigative authority~~ immediate protection and emergency  
17 protective services must state the specific authority requested and the facts establishing probable cause  
18 that a ~~youth~~ child is abused or neglected or is in danger of being abused or neglected.

19 ~~(3)(c)~~ The petition for ~~temporary investigative authority~~ immediate protection and emergency  
20 protective services must be supported by an affidavit signed by the county attorney, the attorney general,  
21 or an attorney hired by the county or must be supported by a department report stating in detail the facts  
22 upon which the request is based. The petition, affidavit, or report of the department must contain  
23 information regarding statements, if any, made by the parents detailing the parents' statement of the facts  
24 of the case. ~~Except as provided in 41-3-403, the~~ The parents, if available in person or by electronic means,  
25 must be given an opportunity to ~~address~~ present evidence to the court before the court rules on the  
26 petition.

27 (2) The person filing the petition for immediate protection and emergency protective services has  
28 the burden of presenting evidence establishing probable cause for the issuance of an order for immediate  
29 protection of the child, except as provided by the federal Indian Child Welfare Act, if applicable. The court  
30 shall consider the parents' statements, if any, included with the petition and any accompanying affidavit

1 or report to the court. If the court finds probable cause, the court may issue an order granting the  
2 following forms of relief, WHICH DO NOT CONSTITUTE A COURT-ORDERED TREATMENT PLAN UNDER 41-3-420:

3 (a) the right of entry by a peace officer or department worker;

4 (b) the right to place the child in temporary medical or out-of-home care, including but not limited  
5 to care provided by a noncustodial parent, kinship or foster family, group home, or institution;

6 (c) a requirement that the parents, guardian, or other person having physical or legal custody  
7 furnish information that the court may designate and obtain evaluations that may be necessary to  
8 determine whether a child is a youth in need of care;

9 (d) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the  
10 home to allow the child to remain in the home;

11 (e) a requirement that the parent provide the department with the name and address of the other  
12 parent, if known, unless parental rights to the child have been terminated;

13 (f) a requirement that the parent provide the department with the names and addresses of  
14 extended family members who may be considered as placement options for the child who is the subject  
15 of the proceeding; and

16 (g) any other temporary disposition that may be required in the best interests of the child that does  
17 not require an expenditure of money by the department unless the department is notified and a court  
18 hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort  
19 after all family, insurance, and other resources have been examined.

20 (3) An order for removal of a child from the home must include a finding that continued residence  
21 of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in  
22 the best interests of the child.

23 (4) The order for immediate protection of the child must require the person served to comply  
24 immediately with the terms of the order and to appear before the court issuing the order on the date  
25 specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the  
26 person in contempt or place temporary physical custody of the child with the department until further  
27 order.

28 (5) The petition must be served as provided in 41-3-401."  
29

30 NEW SECTION. Section 6. Show cause hearing -- order. (1) (a) A show cause hearing must be

1 conducted within 10 days, excluding weekends and holidays, of the filing of an initial child abuse and  
2 neglect petition unless otherwise stipulated by the parties pursuant to [section 14] or unless an extension  
3 of time is granted by the court.

4 (b) The court may grant an extension of time for a show cause hearing only upon a showing of  
5 substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

6 (2) The person filing the petition has the burden of presenting evidence establishing probable cause  
7 for the issuance of an order for temporary investigative authority after the show cause hearing, except as  
8 provided by the federal Indian Child Welfare Act, if applicable.

9 (3) At the show cause hearing, the court may consider all evidence and shall provide an  
10 opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide  
11 testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The  
12 parent, guardian, or other person may be represented by legal counsel. The court may permit testimony  
13 by telephone, audiovisual means, or other electronic means.

14 (4) At the show cause hearing, the court shall explain the procedures to be followed in the case  
15 and explain the parties' rights, including the right to request appointment of counsel if indigent or if  
16 appointment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right  
17 to challenge the allegations contained in the petition. The parent, guardian, or other person having physical  
18 or legal custody of the child must be given the opportunity to admit or deny the allegations contained in  
19 the petition at the show cause hearing. Inquiry must be made to determine whether the notice  
20 requirements of the federal Indian Child Welfare Act, if applicable, have been met.

21 (5) The court shall make written findings on issues including but not limited to the following:

22 (a) whether the child should be returned home immediately if there has been an emergency  
23 removal or remain in temporary out-of-home care or be removed from the home;

24 (b) if removal is ordered or continuation of removal is ordered, why continuation of the child in  
25 the home would be contrary to the child's best interests and welfare;

26 (c) whether the department has made reasonable efforts to avoid protective placement of the child  
27 or to make it possible to safely return the child to the child's home;

28 (d) financial support of the child, including inquiry into the financial ability of the parents, guardian,  
29 or other person having physical or legal custody of the child to contribute to the costs for the care,  
30 custody, and treatment of the child and requirements of a contribution for those costs pursuant to

1 41-3-411; and

2 (e) whether another hearing is needed and, if so, the date and time of the next hearing.

3 (6) The court may consider:

4 (a) terms and conditions for parental visitation; and

5 (b) whether orders for examinations, evaluations, counseling, immediate services, or protection  
6 are needed.

7 (7) Following the show cause hearing, the court may enter an order for the relief requested or  
8 amend a previous order for immediate protection of the child if one has been entered. The order must be  
9 in writing.

10 (8) If a child who has been removed from the child's home is not returned home after the show  
11 cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having  
12 physical or legal custody of the child named in the petition may request that a local citizen review board,  
13 if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing  
14 and make a recommendation to the district court, as provided in 41-3-1010.

15 (9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if  
16 the requirements of 41-3-404(2) are met. If not made at the show cause hearing, adjudication under  
17 41-3-404 must be made within the time limits required by 41-3-404 unless adjudication occurs earlier by  
18 stipulation of the parties pursuant to [section 14] and order of the court.

19

20 NEW SECTION. **Section 7. Temporary investigative authority.** The department may petition the  
21 court for authorization to conduct an investigation into allegations of child abuse, neglect, or abandonment  
22 when necessary. An order for temporary investigative authority may not be issued for a period longer than  
23 90 days. The petition must be served as provided in 41-3-401.

24

25 **Section 8.** Section 41-3-403, MCA, is amended to read:

26 **"41-3-403. ~~Order for immediate protection of youth~~ Reasonable efforts required to prevent**  
27 **~~removal of child or to return -- exemption -- findings -- permanency plan.~~ (1) (a) Upon the filing of a petition**  
28 **~~for temporary investigative authority and protective services, the court, after consideration of the parents'~~**  
29 **~~statements, if any, included with the petition and any accompanying affidavit or report to the court, may~~**  
30 **~~issue an order granting relief that may be required for the immediate protection of the youth.~~**

~~————(b) The order, along with the petition and supporting documents, must be served pursuant to the Montana Rules of Civil Procedure on the person or persons named in the order. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon after placement as possible.~~

~~————(c) The order must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. At the show cause hearing, the court shall provide an opportunity for a parent or guardian, if present, and any other person having relevant knowledge to provide relevant testimony. The court may consider all relevant evidence in accordance with the rules of civil procedure as modified by this part, but may in its discretion limit testimony and evidence to only that which is relevant to the issues of removal from the home and the child's need for continued protection. The court may amend the order. Except as otherwise provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2, chapter 4, part 6, that results from adverse licensing action taken by the department.~~

~~————(d) If the child is not returned home after the show cause hearing, the person served may request that a local citizen review board, if available pursuant to part 10, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.~~

~~————(e) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the youth with the department until further order.~~

~~————(2) At the conclusion of a show cause hearing, in an order granting or denying relief, the court shall make a finding regarding the reasonableness of agency efforts to prevent the child's removal from the home or to make it possible to safely return the child to the child's home. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.~~

(1) Reasonable The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state. Reasonable

efforts include but are not limited to development of individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern. The court shall review the services provided by the agency.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. If an indigent parent is not already represented by counsel, counsel must be appointed by the court at the time that a request is made for a determination under this subsection. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services ~~are not required~~ if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; ~~and or~~

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

~~(4)(5)~~ If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(5)(6)~~ If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home.

~~(6) The court may grant the following kinds of relief:~~

~~—— (a) right of entry by a peace officer or department worker;~~

~~—— (b) medical and psychological evaluation of the youth or parents, guardians, or person having physical or legal custody;~~

~~—— (c) requirement that the youth, parents, guardians, or person having physical or legal custody receive counseling services;~~

~~—— (d) placement of the youth in a temporary medical facility or a facility for protection of the youth;~~

~~—— (e) requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate;~~

~~—— (f) inquiry into the financial ability of the parents, guardian, or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a~~



1 ~~contribution for those costs pursuant to the requirements of 41-3-411; or~~

2 ~~—— (g) other temporary disposition that may be required in the best interests of the youth that does~~  
3 ~~not require an expenditure of money by the department unless the department is notified and a court~~  
4 ~~hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort~~  
5 ~~after all family, insurance, and other resources have been examined.~~

6 ~~—— (7) An order for temporary investigative authority and protective services may not be issued for~~  
7 ~~a period longer than 90 days following the show cause hearing and must be limited to one extension of~~  
8 ~~90 days. Before the expiration of the time provided for in an order for temporary investigative authority~~  
9 ~~and protective services, the county attorney, the attorney general, or an attorney hired by the county shall~~  
10 ~~file a petition for one of the following:~~

11 ~~—— (a) limited emancipation;~~

12 ~~—— (b) temporary legal custody;~~

13 ~~—— (c) termination of the parent-child legal relationship and permanent legal custody with the right~~  
14 ~~to consent to adoption; or~~

15 ~~—— (d) dismissal.~~

16 ~~—— (8) Notwithstanding the above time limits, the court may continue an order for temporary~~  
17 ~~investigative authority pending a hearing on a petition provided for in subsection (7).~~

18 ~~—— (9) If the time limitations of this section are not met, the court shall review the reasons for the~~  
19 ~~failure and order an appropriate remedy that considers the best interests of the child."~~

21 **Section 9.** Section 41-3-404, MCA, is amended to read:

22 **"41-3-404. Adjudicatory hearing Adjudication -- temporary disposition -- findings -- order. (1)**

23 Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show  
24 cause hearing under [section 6]. Adjudication may take place at the show cause hearing if the  
25 requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to  
26 [section 14] and order of the court. Exceptions to the time limit may be allowed only in cases involving  
27 newly discovered evidence, unavoidable delays in the notification of parties, and unforeseen personal  
28 emergencies.

29 ~~(1)(2) In the adjudicatory hearing~~ The court may make an adjudication on a petition under  
30 ~~41-3-401; if the court shall determine~~ determines by a preponderance of the evidence ~~whether, except~~

1 as provided in the federal Indian Child Welfare Act, if applicable, that the youth child is a youth in need  
2 of care and ~~ascertain~~ ascertains, as far as possible, the cause. Except as otherwise provided in this part,  
3 the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an  
4 adjudicatory hearing. ~~Hearsay evidence of statements made by the affected child is admissible at the~~  
5 hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted  
6 in state intervention and upon which disposition, case work, court review, and possible termination are  
7 based.

8 ~~(2)~~(3) The court shall hear evidence regarding the residence of the youth child, paternity, if in  
9 question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the  
10 court considers relevant in determining the status of the youth child.

11 ~~(3)~~(4) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the  
12 examination or treatment of the child do not apply, except the attorney-client privilege granted by  
13 26-1-803 and the mediation privilege granted by 26-1-813.

14 ~~(4)~~(5) (a) If the court determines that the youth child is not an abused or neglected child, the  
15 petition must be dismissed and any order made pursuant to ~~41-3-403~~ 41-3-402 or [section 6] must be  
16 vacated.

17 (b) If the youth child is adjudicated a youth in need of care, the court shall set a date for a  
18 dispositional hearing to be conducted within ~~30~~ 20 days, as provided in 41-3-406(2), and order any  
19 necessary or required investigations. The court may issue a temporary dispositional order pending the  
20 dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed  
21 in ~~41-3-403(6)~~ 41-3-402(2).

22 (6) (a) Before making an adjudication, the court shall make written findings on issues including but  
23 not limited to the following:

24 (i) which allegations of the petition have been proved or admitted, if any;

25 (ii) whether there is a legal basis for continued court and department intervention; and

26 (iii) whether the department has made reasonable efforts to avoid protective placement of the child  
27 or to make it possible to safely return the child to the child's home.

28 (b) The court may order:

29 (i) terms for visitation, support, and other intrafamily communication pending disposition if the  
30 child is to be placed or to remain in temporary out-of-home care prior to disposition;

- 1 (ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition  
2 hearing;  
3 (iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not  
4 already done;  
5 (iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the  
6 child to remain in the home; and  
7 (v) the department to continue efforts to notify noncustodial parents."

8  
9 **Section 10.** Section 41-3-406, MCA, is amended to read:

10 **"41-3-406. ~~Dispositional Disposition -- hearing -- temporary legal custody -- order.~~** (1) Unless a  
11 petition is dismissed or unless otherwise stipulated by the parties pursuant to [section 14] or ordered by  
12 the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days  
13 after an adjudicatory order has been entered under 41-3-404. Exceptions to the time limit may be allowed  
14 only in cases involving newly discovered evidence, unavoidable delays in the notification of parties, and  
15 unforeseen personal emergencies.

16 (2) (a) A dispositional order must be made after a dispositional hearing that is separate from the  
17 adjudicatory hearing under 41-3-404. The hearing process must be scheduled and structured so that  
18 dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is  
19 admissible at the dispositional hearing.

20 (b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately  
21 after the adjudicatory phase of the proceedings if:

22 (i) all required reports are available and have been received by all parties or their attorneys at least  
23 5 WORKING days in advance of the hearing; and

24 (ii) the judge has an opportunity to review the reports after the adjudication.

25 ~~(1)(3)~~ If a youth child is found to be a youth in need of care under 41-3-404, the court may enter  
26 its judgment, making any of the following dispositions to protect the welfare of the youth child:

27 (a) permit the youth child to remain with the youth's child's parent or guardian, subject to those  
28 conditions and limitations the court may prescribe;

29 (b) grant an order of limited emancipation to a youth who is 16 years of age or older, as provided  
30 in 41-3-408;

(c) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the youth child and that is licensed or otherwise authorized by law to receive and provide care of the youth child; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the youth child;

(d) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(e) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-411.

~~(2) To grant temporary legal custody, the court shall make a finding that:~~

~~—— (a) dismissing the petition would create a substantial risk of harm to the child or detriment to the child's physical or psychological well-being; and~~

~~—— (b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-403, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.~~

~~(3)~~(4) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(4)~~(5) If the court finds that reasonable efforts are not necessary pursuant to [section 11(1)] or subsection (2) or (3) (4) of this section, a permanency hearing must be held within 30 days of that

determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(5) An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:~~

~~—— (a) an extension of temporary legal custody, not to exceed a total of 6 months, upon a showing that additional time is necessary for the parent or guardian to successfully complete a treatment plan;~~

~~—— (b) termination of the parent-child legal relationship and either:~~

~~—— (i) permanent legal custody with the right of adoption; or~~

~~—— (ii) appointment of a guardian pursuant to 41-3-607;~~

~~—— (c) long-term custody pursuant to 41-3-412;~~

~~—— (d) appointment of a guardian pursuant to 41-3-421; or~~

~~—— (e) dismissal.~~

~~—— (6) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (5).~~

~~—— (7) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home.~~

~~(b)(6)~~ If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

**NEW SECTION. Section 11. Temporary legal custody.** (1) If a child is found to be a youth in need of care under 41-3-404, the court may grant temporary legal custody under 41-3-406 if the court determines by a preponderance of the evidence that:

(a) dismissing the petition would create a substantial risk of harm to the child or would be a detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-403, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(2) An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody, not to exceed a total of 6 months, upon a showing that additional time is necessary for the parent or guardian to successfully complete a treatment plan;

(b) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right of adoption; or

(ii) appointment of a guardian pursuant to 41-3-607;

(c) planned alternative permanent placement pursuant to 41-3-412;

(d) appointment of a guardian pursuant to 41-3-421; or

(e) dismissal.

(3) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (2).

(4) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home and shall specifically find that an extension is in the child's best interests.

(5) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.

(6) In implementing the policy of this section, the child's health and safety are of paramount concern.

(7) A petition requesting temporary legal custody must be served as provided in 41-3-401.

**Section 12.** Section 41-3-412, MCA, is amended to read:

**"41-3-412. Permanency plan hearing.** (1) (a) (i) A Subject to subsection (1)(b), a permanency plan hearing must be held by the court:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-403, 41-3-406(5), or [section 11(1)]; and

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first, unless the proceeding has been dismissed, the child was not removed from the home, or the child

1 ~~has been returned to the child's parent or guardian.~~

2 (ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until  
3 the child is permanently placed, the court shall make a finding whether the department has made  
4 reasonable efforts to finalize the permanency plan for the child.

5 (b) A permanency plan hearing is not required if the proceeding has been dismissed, the child was  
6 not removed from the home, or the child has been returned to the child's parent or guardian.

7 (c) The permanency plan hearing may be combined with a hearing that is required in other sections  
8 of this part if held within the time limits of that section. If a permanency plan hearing is combined with  
9 another hearing, the requirements of the court related to the disposition of the other hearing must be met  
10 in addition to the requirements of this section.

11 (2) At least 3 WORKING days prior to the permanency plan hearing, the department and the  
12 guardian ad litem shall each submit a report regarding the child to the court for review. The report must  
13 address the department's efforts to effectuate the permanency plan for the child, address the options for  
14 the child's permanent placement, examine the reasons for excluding higher priority options, and set forth  
15 the proposed plan to carry out the placement decision, including specific times for achieving the plan. must  
16 ~~contain the:~~

17 ~~—— (a) efforts and progress demonstrated by the child's parent or guardian to complete a treatment~~  
18 ~~plan;~~

19 ~~—— (b) extent to which the parent or guardian cooperated and used the services provided;~~

20 ~~—— (c) status of the child, including the child's mental, physical, and psychological health; and~~

21 ~~—— (d) plan for permanency for the child, including specific times for achieving the plan.~~

22 (3) At least 3 WORKING days prior to the permanency plan hearing, an attorney or advocate for a  
23 parent or guardian may submit an informational report to the court for review.

24 (4) The court's order must be issued within a reasonable time after the permanency plan hearing.  
25 ~~If the~~ The court finds that shall make findings on whether the permanency plan is in the best interests of  
26 the child, ~~the~~ and whether the department has made reasonable efforts to finalize the plan. The court shall  
27 order the department to take whatever additional steps are necessary to effectuate the terms of the plan;  
28 ~~including returning the child safely to the child's home, and shall order the county attorney, the attorney~~  
29 ~~general, or an attorney hired by the county to file any necessary petition to implement the plan with the~~  
30 ~~court within 30 days after the present hearing unless a petition has already been filed.~~

(5) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the ~~provisions~~ options provided in subsection (6) and that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

~~(6) If the permanency plan hearing results in a finding that reunification of the child with the child's parent or guardian is not in the best interests of the child, a subsequent petition filed must be one of the following~~ Permanency options include:

~~—— (a) termination of parental rights if the applicable requirements to terminate parental rights have been met;~~

(A) REUNIFICATION OF THE CHILD WITH THE CHILD'S PARENT OR GUARDIAN;

(B) ADOPTION;

~~(b)(c)~~ appointment of a guardian pursuant to 41-3-421; or

~~(e)(d) long-term custody~~ A planned alternative permanent placement of LIVING ARRANGEMENT FOR A child if the evidence demonstrates by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a relative;

~~(+)(ii)~~ the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

~~(+)(iii)~~ the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

~~(+)(iv)~~ the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; OR

~~—— (iv)(v) the child is in a group of siblings, at least one of whom meets the requirements of subsections (6)(c)(v)(A) (6)(c)(vi)(A) through (6)(c)(v)(D) (6)(c)(vi)(D), and the best interests of the child will be met by continued placement in the sibling group in long-term foster care~~ planned alternative permanent placement; or

~~(v)(vi)(v) the child is at least 12 years of age and~~ meets the following criteria:



(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) ~~there is a judicial finding that other permanent placement~~ termination of parental rights to the child is not in the child's best interests ~~options for the child have been considered and found not to be in the child's best interests;~~ and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(7) The court may terminate ~~long-term custody~~ the planned alternative permanent placement ~~LIVING ARRANGEMENT~~ upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

**Section 13.** Section 41-3-420, MCA, is amended to read:

**"41-3-420. Treatment plan -- contents -- changes.** (1) ~~Upon the stipulation of the parties or upon a judicial finding that a child is a youth in need of care, the~~ The court may order a treatment plan if:

(a) the parent or parents admit the allegations of an abuse and neglect petition;

(b) the parent or parents stipulate to the allegations of abuse or neglect pursuant to [section 14];

or

(c) the court has made an adjudication under 41-3-404 that the child is a youth in need of care.

(2) Every treatment plan must contain the following information:

(a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;

(b) the treatment goals and objectives for each condition or requirement established in the plan.

If the child has been removed from the home, the treatment plan must include but is not limited to the conditions or requirements that must be established for the safe return of the child to the family.

(c) the projected time necessary to complete each of the treatment objectives;

(d) the specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the treatment plan; and

(e) the signature of the parent or parents or guardian, unless the plan is ordered by the court.

(3) A treatment plan may include but is not limited to any of the following remedies, requirements, or conditions:

(a) the right of entry into the child's home for the purpose of assessing compliance with the terms and conditions of a treatment plan;

(b) the requirement of either the child or the child's parent or guardian to obtain medical or psychiatric diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;

(c) the requirement of either the child or the child's parent or guardian to obtain psychological treatment or counseling;

(d) the requirement of either the child or the child's parent or guardian to obtain and follow through with alcohol or substance abuse evaluation and counseling, if necessary;

(e) the requirement that either the child or the child's parent or guardian be restricted from associating with or contacting any individual who may be the subject of a department investigation;

(f) the requirement that the child be placed in a temporary medical facility or a facility for protection of the youth or out-of-home care;

(g) the requirement that the parent, guardian, or other person having physical or legal custody furnish services that the court may designate.

(4) A treatment plan may not be altered, amended, continued, or terminated without the approval of the parent or parents or guardian pursuant to a stipulation and order or order of the court.

(5) A treatment plan must contain a notice provision advising parents:

(a) of timelines for hearings and determinations required under this chapter;

(b) that the state is required by federal and state laws to hold a permanency plan hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(c) that if a child is in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(d) that completion of a treatment plan does not guarantee the return of a child and that completion of the plan without a change in behavior that caused removal in the first instance may result

1 in termination of parental rights."

2

3 **NEW SECTION. Section 14. Stipulations.** Subject to approval by the court, a parent may stipulate  
4 to any of the following:

5 (1) the child meets the definition of a youth in need of care by the preponderance of the evidence;

6 (2) a treatment plan, if the child has been adjudicated a youth in need of care; or

7 (3) the disposition.

8

9 **Section 15.** Section 41-3-421, MCA, is amended to read:

10 **"41-3-421. Abuse and neglect proceedings -- appointment of guardian -- financial subsidies.** (1)

11 The court may, upon the petition of the department or guardian ad litem, enter an order appointing a  
12 guardian for a child who has been placed in the temporary or permanent custody of the department  
13 pursuant to 41-3-406, 41-3-412, or 41-3-607. The guardianship may be subsidized by the department  
14 under subsection (8) if the guardianship meets the department's criteria, or the guardianship may be  
15 nonsubsidized.

16 (2) The court may appoint a guardian for a child pursuant to this section if the following facts are  
17 found by the court:

18 (a) the department has given its written consent to the appointment of the guardian, whether the  
19 guardianship is to be subsidized or not;

20 (b) if the guardianship is to be subsidized, the department has given its written consent after the  
21 department has considered initiating or continuing financial subsidies pursuant to subsection (8);

22 (c) the child has been adjudicated a youth in need of care;

23 (d) the department has made reasonable efforts to reunite the parent and child, further efforts to  
24 reunite the parent and child by the department would likely be unproductive, and reunification of the parent  
25 and child would be contrary to the best interests of the child;

26 ~~—— (e) the child is at least 12 years old or the child is in a group of siblings, at least one of whom is~~  
27 ~~at least 12 years old, and the guardianship is in the best interests of the siblings;~~

28 ~~(f)~~(E) the child has lived with the potential guardian in a family setting and the potential guardian  
29 is committed to providing a long-term relationship with the child;

30 ~~(g)~~(F) it is in the best interests of the child to remain or be placed with the potential guardian;

(H)(G) either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests; and

(H)(H) if the child concerning whom the petition for guardianship has been filed is an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the child's tribe has received notification from the state of the initiation of the proceedings.

(3) The entry of a decree of guardianship pursuant to this section terminates the custody of the department and the involvement of the department with the child and the child's parents except ~~a~~ for the department's provision of a financial subsidy, if any, pursuant to subsection (8).

(4) A guardian appointed under this section may exercise the powers and has the duties provided in 72-5-231.

(5) The court may revoke a guardianship ordered pursuant to this section if the court finds, after hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian, the department, any ~~court-appointed~~ court-appointed guardian ad litem, the child's parent if the rights of the parent have not been terminated, and other persons directly interested in the welfare of the child.

(6) A guardian may petition the court for permission to resign the guardianship. A petition may include a request for appointment of a successor guardian.

(7) After notice and hearing on a petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary legal custody to the department pursuant to 41-3-406.

(8) The department may provide a financial subsidy to a guardian appointed pursuant to this section if the guardianship meets the department's criteria and if the department determines that a subsidy is in the best interests of the child. The amount of the subsidy must be determined by the department.

(9) This section does not apply to guardians appointed pursuant to Title 72, chapter 5."

NEW SECTION. **Section 16. Repealer.** ~~Section SECTIONS 41-3-413 AND 41-3-1014, MCA, is~~ ARE repealed.

NEW SECTION. **Section 17. Codification instruction -- code commissioner instruction.** (1)

1 [Sections 6, 7, 11, and 14] are intended to be codified as an integral part of Title 41, chapter 3, part 4,  
2 and the provisions of Title 41, chapter 3, part 4, apply to [sections 6, 7, 11, and 14].

3 (2) The code commissioner is instructed to rearrange and renumber the following sections in Title  
4 41, chapter 3, part 4, in the following order:  
5 41-3-401,  
6 41-3-403,  
7 41-3-402,  
8 [section 6],  
9 [section 7],  
10 [section 14],  
11 41-3-404,  
12 41-3-406,  
13 [section 11],  
14 41-3-420,  
15 41-3-421,  
16 41-3-412,  
17 ~~41-3-413,~~  
18 41-3-411.

19 (3) The code commissioner is instructed to renumber:

20 (a) 41-3-303, 41-3-409, 41-3-1115, 41-3-1160, and 41-3-1161 as an integral part of Title 41,  
21 chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to the renumbered sections;

22 (b) 41-3-408 as a new part in Title 41, chapter 1, and to insert "of public health and human  
23 services" after "department" in subsection (1) of the renumbered section;

24 (c) Title 41, chapter 3, part 7, as a new chapter in Title 52;

25 (d) Title 41, chapter 3, part 11, as a new part in Title 52, chapter 2; and

26 (e) Title 42, chapter 8, as a new chapter in Title 52.

27

28 NEW SECTION. Section 18. Coordination instruction. (1) If \_\_\_ Bill No. \_\_\_ [LC 261] and [this  
29 act] are both passed and approved, then \_\_\_ Bill No. \_\_\_ [LC 261] is void.

30 (2) If \_\_\_ Bill No. \_\_\_ [LC 518] and [this act] are both passed and approved, then 41-3-401(6)

1 contained in [this act] must read as follows: "(6) Except as provided in the federal Indian Child Welfare  
2 Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the  
3 child named in the petition, if residing in the state, must be served personally with a copy of all petitions  
4 at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the  
5 person or agency may be served by publication as provided in [sections 1 and 2 of LC 518]."

6 (3) IF SENATE BILL NO. 116 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN THE AMENDMENTS IN  
7 SENATE BILL NO. 116 TO 41-3-403(6), 41-3-406(7), AND 41-3-413 ARE VOID.

8

9 NEW SECTION. **Section 19. Saving clause.** [This act] does not affect rights and duties that  
10 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this  
11 act].

12

- END -